

Attorney Docket No.: 78687-128 (RU-0238)
Inventors: Howell and Vorsa
Serial No.: 10/772,566
Filing Date: February 4, 2004
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REMARKS

Applicants note that the Office Action Summary page indicates that claims 1-90 are pending in the instant application, when claims 1-13, 20-51, 53-90 are in fact pending in this application. No new matter has been added. Applicants are respectfully requesting reconsideration of the restriction requirement in view of the following remarks.

The claims of the present application have been subjected to a Restriction Requirement under 35 U.S.C. §121 as follows:

Group I, claims 1-19, 51-52, 90, drawn to plant proanthocyanidin extract and compositions thereof, classified in several heterocyclic and non-heterocyclic classes, numerous subclasses;

Group II, claims 20-47, drawn to process of extracting, classified in several heterocyclic and non-heterocyclic classes, numerous subclasses;

Group III, claims 48-50, 53-55, drawn to product-by-process plant proanthocyanidin extract and compositions thereof, classified in several heterocyclic and non-heterocyclic classes, numerous subclasses;

Group IV, claims 56-60, 63-71, 73-74, 81-89, drawn to method of using plant proanthocyanidin extract, classified in several heterocyclic and non-heterocyclic classes, numerous subclasses; and

Group V, claims 61-62, 72, 75-80, drawn to food compositions, classified in several heterocyclic and non-heterocyclic classes, numerous subclasses.

In Applicants' preliminary amendment filed February 4, 2004, claims 14-19 and 52 were canceled, and claim 90 was amended to

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read on a method of detecting P-type reactive bacteria in a body fluid sample. Accordingly, Applicants will assume that Group I encompasses claims 1-13 and 51-52, and claim 90 falls within Group IV as it is dependent on claim 89 of Group IV.

It is suggested that the invention is drawn to distinct compounds with diverse chemical structure, chemical properties, modes of action, different effects and reactive conditions. The Examiner acknowledges that inventions of groups I, III, and IV-V are related as product and method of using, respectively; however, suggests that they are distinct because the product as claimed could be used in materially different utilities as demonstrated throughout the specification and in groups IV-V, which are directed to different methods of using the product. Further, the Examiner suggests that the methods of use of Groups IV-V are unrelated because the patient population treated for each disease is divergent. Inventions II and I,III are acknowledged as being related as process of making and products made; however, it is suggested that the process as claimed can be used to make other and materially different product of Morimoto et al. ((1988) *Chem. Pharm. Bull.* 36:33-38). The Examiner suggests that because of the plethora of classes and subclasses in each of the Groups, a serious burden is imposed on the Examiner to perform a complete search of the defined areas and therefore restriction is proper. Applicants are required to elect one of the Groups to be examined.

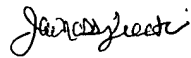
Applicants respectfully traverse this restriction requirement. In particular, Applicants respectfully believe that a search of the relevant prior art pertaining to a plant proanthocyanidin extract of the instant invention will

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concurrently disclose methods of using the same; a disclosure describing an extract is generally always accompanied by a proposed function or utility for the same. Accordingly, a search of the claims of Groups I and IV, which overlap in their classification, would be coextensive in scope. It is therefore respectfully requested that this restriction requirement be reconsidered and withdrawn.

However, in an earnest effort to be completely responsive, Applicants hereby elect to prosecute Group I, with traverse.

Respectfully submitted,



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